that the right of a person under a contract made at any time while he was in default shall not be enforceable by action. That being the construction, in my view, it is only necessary to say that the contract in this case was not such an one. Shaffer was not in default at the time he made the contract."

In my judgment, section 17(1) of the Business Registration Act does not disable the plaintiff from enforcing his rights under the Deed against the 1st defendant as contended on behalf of the 1st defendant. The 1st defendant therefore has no defence to the claim. Accordingly, I allow the appeal, set aside the order made by the Deputy Registrar, and order that judgment be entered for the plaintiff in the sum as claimed in the Statement of Claim with interest at 8% per annum from the date of issue of the writ to the date of judgment and costs. The 1st defendant will have to pay the costs of this appeal and the costs of the application before the Deputy Registrar.

Appeal allowed.

Solicitors: *Gopalan Nair; Selvadurai Pala Krishnan & Partners.*

GRACIE TEO v. TAY LENG HONG & ORS.

[A.C.J. (Thean J.) June 12, 1987]

[Singapore – District Court Appeal No. 15 of 1984]

Landlord and Tenant – Tenant holding over – Claim for arrears of rent and vacant possession – Civil Law Act (Cap. 30, 1970 Ed. now Cap. 43, 1985 Ed.), s.17(4).

Practice and Procedure – Statement of Claim – Amendment to add fourth plaintiff to – Date of effect – Subordinate Courts Rules, 1970, O.8 r.8(3) – R.S.C. (U.K.), O.15 r.8(4)(a).

Landlord and Tenant – Tenant spent money to improve premises in return for non-increase in rent – No equitable right to retain possession of premises.

The first, second and third defendants were the executors of the will of the late Lim Sin Lock deceased, who at the date of death was the owner of the premises at No.11K, Jalan Sayang, Singapore ("the said premises"). The defendant was a tenant of the said premises paying a monthly rent of $40. She became a tenant thereof in 1971.

On October 19, 1979, the solicitors acting for the first and second plaintiffs as executors of the will of Lim Sin Lock deceased gave to the defendant a notice to quit and deliver vacant possession of the said premises on or before November 30, 1979. After the expiry of the notice, the defendant remained in possession of the said premises and refused to quit. On May 19, 1980, the first, second and third plaintiffs commenced action in the District Court claiming for arrears of rent due, mesne profits for holding over the said premises from December 1, 1979, and vacant possession of the said premises.

After the action had been commenced, the first, second and third plaintiffs sold the premises to one Ng Chwee Yen, who subsequently sold them to M/S Davis Development Pte. Ltd. Subsequently the first, second and third defendants applied for and obtained an order dated November 8, 1983, joining M/S Davis Development as the fourth plaintiff in the action. The Statement of Claim was amended accordingly. The first, second and third plaintiffs claimed for the balance of the arrears of rent due amounting to a sum of $2,160 and mesne profits for holding over the said premises from December 1, 1979 to March 1983 at the rate of $80 per month and the fourth plaintiff claimed possession of the said premises and an amount for use and occupation of the said premises at the rate of $80 per month with effect from June 15, 1983 to the date of delivery of possession of the said premises. The defendant amended her Defence which was filed and delivered on December 3, 1983.

Immediately before the commencement of the trial on January 30, 1984, the defendant applied for an order that the fourth plaintiff be struck out as a party to the action on the ground that it had no cause of action at the date when the action was commenced. The learned District Judge dismissed the application. At the trial the learned District Judge found that (a) the said premises were not the premises within the Control of Rent Act; (b) no irrevocable tenancy of the said premises for a term of 30 years had been granted to the defendants; (c) the defendant had no equitable right to retain possession of the said premises. However, on the facts, he held that the defendant had spent a sum of $2,000 in improving the said premises at the material time with knowledge and consent of the plaintiffs in view thereof the defendant had an equity in the said premises which ought to be satisfied.

He gave (i) judgment to the first, second and third plaintiffs in the sum of $1,600 being the mesne profits at the rate of $40 per month with effect from December 1, 1979 to March 1983 and awarded costs of £1,147 to them; and (ii) judgment to the fourth plaintiff for the recovery of possession of the said premises to be delivered on or before April 30, 1984, and he ordered the fourth plaintiff to pay a sum of $2,000 to the defendant in satisfaction of her equity, such sum to be paid before she delivered vacant possession of the said premises on or before April 30, 1984. The defendant was ordered to pay the fourth plaintiff a sum of $40 p.m. for the use and occupation of the said premises with effect from June 15, 1983 to the date of delivery of possession. The defendant was also ordered to quit the premises on or before April 30, 1984.

The defendant appealed.

Held, dismissing the appeal: (1) the fourth plaintiff did not become a party with effect retrospectively at the commencement of the action but on or immediately after the date the order adding it as a party was made. As of that

date the fourth plaintiff was the successor in title to the ownership of the said premises and was entitled to the benefit of the termination of the tenancy of the said premises and could sue for possession of the said premises;

(2) the learned District Judge had found rightly that the defendant had no equitable right to retain possession of the said premises. That being so, it must follow that the defendant had no equity at all in the said premises;

(3) the only agreement made between the defendant and the persons in charge of management of the said premises was that in consideration of the defendant spending money in improving the premises the landlords would not increase the rent of $40 per month. In conformity with this agreement, no increase of rent had been made by the first, second and third plaintiffs or their predecessor in title. On the basis of the evidence, there could be no equity in favour of the defendant;

(4) under section 17(4) of the Civil Law Act (Cap. 30, 1970 Ed.) (now section 16(4) of the Civil Law Act (Cap. 43, 1985 Ed.)), once there is a holding over of the tenancy of a property, the landlord is entitled to double rent until possession is given or double the value during the period of detention of the property. It is not a requirement under this provision that there should be a wilful holding over on the part of a tenant;

(5) the plaintiffs were entitled to double rent at the rate of $80 p.m. from December 1, 1980.

Cases referred to:

(1) *Seabridge & Ors.* v. *H. Cox & Sons (Plant Hire) Ltd.* [1968] 2 Q.B. 46.
(2) *Liff* v. *Peasley* [1980] 1 All E.R. 623, 640 to 642.
(3) *Ramsden* v. *Dyson* (1866) L.R. 1 H.L. 129, 170.
(4) *Plimmer* v. *Mayor, etc. of the City of Wellington* (1884) 9 App. Cas. 699.
(5) *Inwards* v. *Baker* [1965] 2 Q.B. 29.
(6) *French* v. *Elliot* [1959] 3 All E.R. 866.

DISTRICT COURT APPEAL.

Andrew Ee for the appellant.
Sahul Hameed for the respondents.

Cur. Adv. Vult.

Thean J.: The 1st, 2nd and 3rd plaintiffs are the executors of the will of the late Lim Sin Lock deceased, who at the date of death was the owner of, *inter alia*, the premises known as No. 11-K, Jalan Sayang, Singapore ("the said premises"). The defendant was a tenant of the said premises paying a monthly rent of $40; she became a tenant thereof in 1971. On October 19, 1979, the solicitors acting for the 1st and 2nd plaintiffs as executors of the will of Lim Sin Lock deceased gave to the defendant a notice to quit and deliver vacant possession of the said premises on or before November 30, 1979. After the expiry of the notice the defendant remained in possession of the said premises and refused to quit. On May 19, 1980, the 1st, 2nd and 3rd plaintiffs instituted an action in the District Court claiming for arrears of rent due, mesne profits for holding over the said premises from December 1, 1979, and vacant possession of the said premises.

After the action had been commenced, the 1st, 2nd and 3rd plaintiffs sold, *inter alia*, the said premises to one Ng Chwee Yan, who subsequently sold them to M/s Davis Development Pte. Ltd.; the said premises together with other properties were conveyed to the company on June 14, 1983. Subsequent to the sale of the said premises, the 1st, 2nd and 3rd plaintiffs applied for and obtained an order dated November 8, 1983, joining M/s Davis Development Pte. Ltd. as the 4th plaintiff in the action and giving leave to the plaintiffs to amend the Statement of Claim and the defendant to amend her defence within 14 days after service of the amended Statement of Claim. Against that order the defendant did not appeal. In consequence of the order, the Statement of Claim was amended in which the 1st, 2nd and 3rd plaintiffs claimed for the balance of the arrears of rent due amounting to a sum of $2,160 and mesne profits for holding over the said premises from December 1, 1979, to March 1983 at the rate of $80 per month and the 4th plaintiff claimed possession of the said premises and an amount for use and occupation of the said premises at the rate of $80 per month with effect from June 15, 1983 to the date of delivery of possession of the said premises. The defendant then amended her Defence which was filed and delivered on December 3, 1983.

Immediately before the commencement of the trial on January 30, 1984, counsel for the defendant applied (by way of Notice of Application No. 683 of 1984) for an order that the 4th plaintiff be struck out as a party to the action on the ground that it had no cause of action at the date when the action was commenced. The application was dismissed by the learned District Judge who held that, firstly, the application was misconceived and, secondly, in any event it had no merit. The trial then proceeded and the issues before the Court were:

(i) whether the said premises are premises within the meaning of the Control of Rent Act;

(ii) whether an irrevocable tenancy of the said premises for a term of 30 years had been granted to the defendant, and

(iii) whether the defendant had an equitable right to retain possession of the said premises.

On the first issue, the learned District Judge on the evidence before him found that the said premises were not the premises within the meaning of the Control of Rent Act. On the second issue, he found that no irrevocable tenancy of the said premises for a term of 30 years had been granted to the defendant. As for the third issue, he held that the defendant had no equitable right to retain possession of the said premises. However, on the facts, he held that the defendant had spent a sum of $2,000 in improving the said premises at the material time with the knowledge and consent of the plaintiffs and in view thereof the defendant had an equity in the said premises which ought to be satisfied. He gave: (i) judgment to the 1st, 2nd and 3rd plaintiffs in the sum of $1,600 being the mesne profits at the rate of $40 per month with effect from December 1, 1979 to March 1983 and awarded costs of $1,147 to them, and (ii) judgment to the 4th plaintiff for the recovery of possession of the said premises to be delivered on or before April 30, 1984, and he ordered the 4th plaintiff to pay a sum of $2,000 to the defendant in satisfaction of her equity, such sum to be paid before she delivered vacant possession of the said premises on or before April 30, 1984, and he further ordered the defendant pay to the 4th plaintiff a sum of $40 per month for the use and occupation of the said premises with effect from June 15, 1983 to the date of delivery of possession. Lastly, he ordered the defendant to quit the said premises on or before April 30, 1984.

In the course of the trial, counsel for the defendant raised a further defence which was not pleaded: he submitted that on the evidence the late Lim Sin Lock built the said premises illegally, as no building plans had been submitted to the authorities and no approval had been obtained, and accordingly he urged the Court not to lend its assistance to the plaintiffs to enforce the claims which, he said, were tainted with illegality. The learned District Judge rejected this defence on the ground that there was no sufficient evidence that no building plans had been submitted to the relevant authorities and no approval had been obtained. Further, the learned District Judge held that the tenancy was legal and there was no suggestion on behalf of the defendant that it was in any way illegal.

Against the decision of the learned District Judge the defendant appealed; prior to the filing of the notice of appeal against that decision, the defendant also filed a notice of appeal against the earlier decision of the learned District Judge dismissing the application No. 683 of 1984 made immediately prior to the commencement of the trial – that was District Court Appeal No. 7 of 1984. Though irregular, the defendant in her petition of appeal in this appeal (District Court Appeal No. 15 of 1984) set out the grounds of both the appeals, and at the hearing counsel for the defendant argued both the appeals before me. The plaintiffs also filed a respondents' notice contending that the decision of the learned District Judge should be varied. At the conclusion of the hearing, I dismissed the appeal with costs, and as regards the respondents' notice I varied the judgment of the learned District Judge to the extent as follows:

(a) the amount payable by the defendant to 1st, 2nd and 3rd plaintiffs as mesne profits be varied to $3,000 at $80 per month from December 1, 1979 to March 31, 1983, less the sum of $200 paid by the defendant to the plaintiffs in December 1980;

(b) that part of the judgment which required the payment by the 4th plaintiff of a sum of $2,000 to the defendant in satisfaction of her equity be set aside, there being no equity in the said premises in her favour;

(c) the amount payable by the defendant to the 4th plaintiff be varied to $80 per month from June 15, 1983 to date of delivery of vacant possession, and

(d) in consequence of the amounts as varied the costs awarded in the said judgment be varied accordingly.

Before me, counsel for the defendant conceded that the said premises were not the premises within the Control of Rent Act, and the issues outstanding were:

(a) whether the 4th plaintiff had a cause of action;

(b) whether there was an irrevocable tenancy of the said premises for a term of 30 years;

(c) whether the defendant had an equitable right to retain possession of the said premises;

(d) whether the claim of the plaintiffs were tainted with illegality;

(e) whether the defendant had an equity, and, if

she had, the extent to which it should be satisfied, and

(f) the quantum to be awarded to the plaintiffs in consequence of the holding over of said premises by the defendant.

On the first issue, the 4th plaintiff had been joined as a party by the order made by the Registrar of the District Court on November 8, 1983, and there was no appeal against that order. When the application by the defendant to strike out the 4th plaintiff came on for hearing on the day of hearing of this action before the District Court, the learned District Judge was right in dismissing it; the application was wholly misconceived. The matter had been disposed of by the learned Registrar and the defendant did not appeal against the order of the learned Registrar and she could not subsequently mount an attack on the same order by another route. In any event, the application had no merit, as was held by the learned District Judge. The notice duly terminating the defendant's tenancy was served on behalf of the 1st and 2nd plaintiffs as representatives of the estate of Lim Sin Hock deceased, and at the time of the commencement of the action the 1st, 2nd and 3rd plaintiffs were entitled to possession of the said premises. However, subsequently they sold the said premises, and clearly an order for possession in their favour could not be made, as they were not the persons entitled to the reversion. It was the 4th plaintiff, the successor in title to the said premises who was the party entitled to the reversion, and since the notice of termination of the tenancy had been given it could enure to the benefit of the 4th plaintiff as the successor in title. In the circumstances the 4th plaintiff should be added, and was added as a party. The order adding it as a party was properly made; it was made under Rule 6(2)(b) or Rule 7(2) of Order 8 of the Subordinate Courts Rules, 1970.

It was submitted on behalf of the defendant that the 4th plaintiff had no cause of action against the defendant at the commencement of the action. This argument was advanced on the basis that the addition of the 4th plaintiff as a party, though made on November 8, 1983, took effect retrospectively as at the commencement of the action. The short answer to this is Order 8 Rule 8(3) of the Subordinate Courts Rules, 1970 which is as follows:

"(3) Where by an order under Rule 6 or 7 a person is to be added as a party or is to be made a party in substitution for some other party, that person shall not become a party until –

(a) where the order is made under Rule 6, the summons has been amended in relation to him under this Rule and (if he is a defendant) has been served on him; or

(b) where the order is made under Rule 7, the order has been served on him under Rule 7(4) or, if the order is not required to be served on him, the order has been noted in the Cause Book;

and where by virtue of the foregoing provision a person becomes a party in substitution for some other party, all things done in the course of the proceedings before the making of the order shall have effect in relation to the new party as they had in relation to the old."

Under this rule, it is clear that the addition of the 4th plaintiff only took effect at the date when the summons had been amended, if the order was made under rule 6(2) or when the order had been noted in the Cause Books, if the order was made under Rule 7(2). In other words, the 4th plaintiff did not become a party with effect retrospectively at the commencement of the action but on or immediately after the date the order adding it as a party was made. As of that date the 4th plaintiff was the successor in title to the ownership of the said premises and was entitled to the benefit of the termination of the tenancy of the said premises and could sue for possession of the said premises. In *Seabridge & Ors.* v. *H. Cox & Sons (Plant Hire) Ltd.*[1] the Court of Appeal in England held that under Order 15 rule 8(4)(a) of the Rules of Supreme Court, which is somewhat similar to the provisions of Order 8 rule 8(3)(a) of the Subordinate Courts Rules, 1970, where a person was added as a defendant, the action was deemed to have begun against him only the moment when the amendment to the writ was stamped. In *Liff* v. *Peasley,*[2] Brandon L.J. (as he then was) said:

"The crucial question here is this: when the original writ in an action is amended by adding a person as defendant, on what date is the action deemed to have been begun, for the purposes of any relevant statute of limitation, as against the person added? Is it the date of the original writ or is it the date of the amendment?

This problem arises not only in relation to amendments involving the addition of a person as defendant. It also arises in relation to amendments involving the addition of a person as plaintiff or the addition of a new cause of action. It does not, however, follow necessarily from this that the problem falls to be resolved in the same way in all three cases, although one might well expect this to be so.

Disregarding for the moment the case law law on the subject, I should have thought that, if a relevant rule of court prescribed at what time an action is to be deemed to have been begun as against a person added as defendant, that is

the time which should be taken for the purpose of answering the question posed above."

And he later said, at page 642:

"There is, in my view, a high degree of artificiality and unreality about the 'relation back' theory. There is no reason to quarrel with the general proposition that an amendment of a writ or a pleading relates back to the original date of the document amended, as stated by Lord Collins M.R. in *Sneade* v. *Wotherton Barytes and Lead Mining Co.* [1904] 1 K.B. 295. This seems to me to be an entirely sensible proposition so long as the amendment concerned does not involve the addition of a new party, either as plaintiff or defendant, or the raising of a new cause of action, but involves only the modification, by addition, deletion or substitution, of pleas or averments made between existing parties in respect of a cause or causes of action already raised. Where, however, the amendment concerned involves the addition of a new party or the raising of a new cause of action, it appears to me to be unrealistic and contrary to the common sense of the matter to treat it as relating back in the same way."

On the second issue: whether an irrevocable tenancy of the said premises for a term of 30 years had been granted to the defendant, the learned District Judge on the evidence before him found that no such tenancy had been granted to the defendant and there was ample evidence to support his finding. I find no merit in the argument advanced on behalf of the defendant on this issue.

On the third issue, the learned District Judge held that the defendant had no equitable right to retain possession of the said premises and I fully agree with him. There was no basis for sustaining such an equitable right.

As for the alleged illegality raised by counsel for the defendant, I again agree entirely with the finding made by the learned District Judge. There was really no evidence to support any suggestion of any illegality in respect of the matter before the Court. The plaintiffs' claims were for possession and mesne profits and were founded on the termination of a contractual tenancy; there was no trace that the tenancy was in any way tainted with illegality. It is wholly unnecessary for me to say anything more on this point.

In the result the appeal failed. I now turn to the remaining two issues which were raised by the respondents' notice. The first relates to the equity which the learned District Judge held that the defendant had. With respect, I am unable to accept this conclusion. The learned District Judge had found, and, in my view, rightly, that the defendant had no equitable right to retain possession of the said premises. That being so, it must follow that the defendant had no equity at all in the said premises. The learned District Judge's decision on defendant's equity was based on the fact that the defendant had spent a sum of $2,000 in improving the said premises at the material time with the knowledge and consent of the plaintiffs. In my view, such a finding of fact is not sufficient to sustain the equity claimed by the defendant. The *locus classicus* on the equity as that claimed by the defendant is the statement of law laid down by Lord Kingsdown in *Ramsden* v. *Dyson*[3]:

"The rule of law applicable to the case appears to me to be this: If a man, under a verbal agreement with a landlord for a certain interest in land, or, what amounts to the same thing, under an expectation, created or encouraged by the landlord, that he shall have a certain interest, takes possession of such land, with the consent of the landlord, and upon the faith of such promise or expectation, with the knowledge of the landlord, and without objection by him, lays out money upon the land, a Court of equity will compel the landlord to give effect to such promise or expectation."

That statement of law was approved by the Privy Council in *Plimmer* v. *Mayor, etc. of the City of Wellington*[4] and was accepted as a correct statement of law. In *Inwards* v. *Baker*[5] Lord Denning, M.R. after referring to that statement of law said at pages 36 to 37:

"It is quite plain from those authorities that if the owner of the land requests another, or indeed allows another, to expend money on the land under an expectation created or encouraged by the landlord that he will be able to remain there, that raises an equity in the licensee such as to entitle him to stay. He has a licence coupled with an equity."

In that case, the defendant was requested by his father to build his house on his father's land, and pursuant to such request the defendant expended money and built his house and lived there for a number of years. His father died and about 12 years later the personal representatives took possession of the property. The Court of Appeal held that he had an equity to stay in that house as long as he wished to retain it as his home.

In this case, there was no evidence of any expectation created or encouraged by the 1st, 2nd and 3rd plaintiffs or those acting on their behalf that the defendant was asked or encouraged to spend moneys in improving the said premises and in consideration of that she was to remain in possession thereof as long as she wished or for a specific period. Nor was there any verbal agreement made to this effect. The only agreement made between the defendant and the persons in charge of management of the said premises was

that in consideration of the defendant spending money in improving the premises the landlords would not increase the rent of $40 per month. In conformity with this agreement, no increase of rent had been made by the 1st, 2nd and 3rd plaintiffs or their predecessors in title. On the basis of the evidence, there could be no equity in favour of the defendant.

The learned District Judge did not award double rent to the plaintiffs at the rate of $80 per month. In my view, section 17(4) of the Civil Law Act applies, and the provision is as follows:

"Every tenant holding over after the determination of his tenancy shall be chargeable, at the option of his landlord, with double the amount of his rent until possession is given up by him or with double the value during the period of detention of the land or premises so detained, whether notice to that effect has been given or not."

In terms of this provision, once there is a holding over of a tenancy of a property, the landlord is entitled to double rent until possession is given or double the value during the period of detention of the property. Counsel for the defendant submitted that there was no wilful holding over by the defendant of the said premises and therefore the plaintiffs were not entitled to double rent or double the value. He relied on the case of *French* v. *Elliot*.[6] There, the Court in England held that the tenant holding over after the determination of his tenancy did not do so wilfully within the meaning of the Landlord and Tenant Act, 1730 and accordingly the claim against him for double value failed. The claim in that case was based on section 1 of the Landlord and Tenant Act, 1730 which reads as follows:

"1. In case any tenant or tenants for any term ... shall wilfully hold over any lands, tenements, or hereditaments after the determination of such term or terms, and after demand made and notice in writing given for delivering the possession thereof by his or their landlords or lessor or the person or persons to whom the remainder or reversion of such lands, tenements, or hereditaments shall belong, ... then and in such case, such person or persons so holding over shall, for and during the time he, she and they shall so hold over ... pay to the person or persons so kept out of possession, ... at the rate of double the yearly value of the lands, tenements, and hereditaments so detained."

Section 17(4) of the Civil Law Act is quite different; it is not a requirement under this provision that there should be a wilful holding over on the part of a tenant, as was the requirement under section 1 of the Landlord and Tenant Act, 1730. The case cited therefore is of no assistance to me. I therefore held that the plaintiffs were entitled to double rent or double the value at the rate of $80 per month from December 1, 1980 and I accordingly varied the order made by the learned District Judge.

Order accordingly.

Solicitors: *Andrew Ee & Co.; Hameed & Co.*

JOHN C. FLEMING & ANOR. v. SEALION HOTELS LTD.

[O.C.J. (Thean J.) June 15, 1987]
[Singapore – Suit No. 3958 of 1981]

Hotel – Theft of jewellery in hotel room – Innkeeper's strict liability at common law – Whether plaintiff hotel "guests" or "travellers" – Whether plaintiff had used ordinary care that prudent person may reasonably be expected to have taken under circumstances – Innkeepers Act (Cap. 36, 1970 Ed., now Cap. 139, 1985 Ed.), ss. 3 & 5.

Innkeepers – Strict liability at common law – Theft of jewellery in hotel room – Whether plaintiffs hotel "guests" or "travellers" – Whether plaintiff had used ordinary case that prudent person may reasonably be expected to have taken under circumstances.

Innkeepers – Exhibition of notice of section 3, Innkeepers Act (Cap. 36, now Cap. 139, 1985 Ed.) – Whether notice exhibited in conspicuous part of inn.

The plaintiffs with their 6-year old son came to Singapore on August 20, 1980. The first plaintiff came here to take up the appointment of general manager of Caterpillar Far East, and the office had made prior reservation of rooms in the Hyatt Regency Hotel ("the Hotel") for him and his family.

The plaintiffs took three rooms, Rooms 1247, 1248 and 1249. The middle Room 1248 had adjoining doors to Rooms 1247 and 1249, respectively. For security reason, the plaintiffs used one entrance at all times for entry and exit. The front doors to Rooms 1247 and 1249 were chain-locked and they returned the keys to these rooms to the Hotel. They retained only the key to Room 1248 which they used for the purpose of entry and exit.

The plaintiffs and their son stayed at the Hotel for about 1½ months, *i.e.* from August 20 to October 7, 1980, while awaiting and looking for suitable residential accommodation.

Shortly after the plaintiff had checked into the Hotel, they applied for and were allotted two safe deposit boxes, one for each, which they used to put their jewellery and important documents. At the time of application for the deposit boxes the first plaintiff asked for a private room for use for putting in and removing articles from the safe deposit boxes in privacy but was told that there was no such room. Hence, every time they made use of the safe deposit